APPEAL NO. 020685
FILED MAY 7, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on February 21, 2002, the hearing officer determined that, based on the reports of the two second opinion doctors who did not concur in the treating surgeon's recommendation for spinal surgery, the respondent (carrier) is not liable for the appellant's (claimant) spinal surgery. The claimant appeals, asserting that the hearing officer abused his discretion in not granting her an additional continuance to present new test results to her second opinion doctor and thereby forcing her to now proceed with a resubmission of her request for approval of spinal surgery under new spinal surgery rules. The claimant does not contend that both second opinion doctors did not concur in the recommendation for spinal surgery. The carrier's response urges affirmance, asserting that the evidence is sufficient to support the hearing officer's determination, that the hearing officer did not abuse his discretion, and that the claimant can pursue the resubmission process provided for in the spinal surgery rules in effect when she initiates her spinal surgery request. The claimant filed a "response" to the carrier's response, an appellate pleading not provided for in the 1989 Act or the rules of the Texas Workers' Compensation Commission (Commission) and not timely as part of the claimant's appeal. In that document the claimant contends that the carrier, in its response to the appeal, mischaracterized certain information in her second opinion doctor's report.

DECISION

Affirmed.

At the outset of the hearing, the claimant stated that she reurged her motion for a continuance so that she could provide her second opinion doctor with the results of three tests he had mentioned in his report which did not concur in the recommendation for spinal surgery. The carrier opposed the motion, noting that the claimant was, in effect, trying to get her spinal surgery request into a resubmission mode before it had even first been granted or denied. The claimant contended that she should not be forced to go through the motions of completing the spinal surgery process at this juncture and then submit a request for resubmission after her second opinion doctor reviewed the new test results and, possibly, changed his opinion. The hearing officer denied the motion, observing that one continuance had already been granted which provided ample opportunity for the claimant to have accomplished what she now desires to accomplish with her second opinion doctor. The record reflects that the claimant's second opinion doctor issued his nonconcurrence on October 1, 2001, with the further statement that three additional tests were needed prior to considering surgery and that hearing was first set for January 10, 2002, and continued to February 21, 2002.

Although the claimant, on appeal, generally challenges the substantive findings of fact and conclusions of law, she does not specify any failure of the evidence to support the

challenged findings. Her sole contention at the hearing, in her opening and closing statements, and in her own direct examination, was that it was premature to go forward with the hearing before she had an opportunity to provide her second opinion doctor with the new test results and see if he would change his recommendation. That too is the relief she seeks on appeal. She emphasized that she wanted to avoid having to be subjected to the resubmission process under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(l) (Rule 133.206(l)) or the new spinal surgery rules. Rule 133.206(m) provides as follows: "This section shall be effective for all Form TWCC-63's [Recommendation for Spinal Surgery] filed with the commission on or after July 1, 1998 and prior to January 1, 2002. On or after January 1, 2002, spinal surgery shall be subject to §134.600 . . . as it may be amended or revised. Form TWCC-63's filed prior to July 1, 1998 shall be subject to the rule in effect at the time the form was filed with the commission."

The claimant did not contend at the hearing, nor did she on appeal, that both the second opinion doctors had nonconcurred with the recommendation for lumbar spine surgery. What this appeal is really about is a contention that the hearing officer abused his discretion in not granting the claimant an additional continuance. Rulings of hearing officers granting or denying requests for the continuance of hearings are reviewed for abuse of discretion. *See, e.g.,* Texas Workers' Compensation Commission Appeal No. 91041, decided December 17, 1991, and Texas Workers' Compensation Commission Appeal No. 91052, decided November 27, 1991. We are satisfied that the hearing officer did not abuse his discretion in denying the additional continuance. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We are also satisfied that the challenged findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

WILLIAM PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.

Philip F. O'Neill
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Robert W. Potts
Appeals Judge